



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KERRIE CAMPBELL, et al.,

Plaintiffs,

-against-

CHADBOURNE & PARKE LLP, et al.,

Defendants.

16-CV-06832 (JPO) (BCM)

**DISCOVERY SCHEDULING ORDER**

**BARBARA MOSES, United States Magistrate Judge.**

In his Opinion and Order dated June 14, 2017 (Dkt. No. 108), the Honorable J. Paul Oetken denied defendants' motion for summary judgment, as well as two related motions, without prejudice to renewal after "limited discovery" on the factors relevant to the "single question" on which each motion turned: "whether Plaintiffs are 'employees' under the relevant federal statutes and therefore protected within their ambit." Op. & Order at 2. The relevant factors are set out in *Clackamas Gastroenterology Assocs., P.C. v. Wells*, 538 U.S. 440, 449-50 (2003). See Op. & Order at 5, 9. Judge Oetken did not otherwise specify the boundaries of permissible discovery except to note that plaintiffs' affidavits and Local Civil Rule 56.1 counter-statement "identif[ied] areas of discovery necessary to respond adequately to Defendants' factual representations under each *Clackamas* factor." *Id.* at 5.

During the pendency of the motions, plaintiffs served requests for production of documents that largely tracked the declaration of their counsel David Sanford, dated January 9, 2017 (Dkt. No. 53), submitted in opposition to defendants' summary judgment motion. Defendants served written objections but did not produce any documents.

Now before me is the parties' joint letter dated June 30, 2017 (Dkt. No. 111), in which plaintiffs and defendants propose very different schedules to accomplish the limited discovery

directed by Judge Oetken. Plaintiffs propose that the necessary discovery, including depositions, be completed in approximately four months, by October 31, 2017, and that defendants' renewed motion for summary judgment be filed by November 30, 2017. Jnt. Ltr. at 2-3. Plaintiffs also request leave to amend their complaint to add allegations concerning opt-in plaintiff Mary Yelenick, to include unspecified "material developments since the operative complaint was filed," and to add Norton Rose Fulbright – the successor firm to defendant Chadbourne & Parke – as a defendant. *Id.* at 3. Defendants seek a significantly longer discovery schedule, ending in approximately eight and a half months from now on March 18, 2018, with their renewed summary judgment motion due on April 30, 2018. *Id.* at 5. In addition, defendants object to any amendment of the complaint on the ground that Judge Oetken has already denied plaintiffs' motion for leave to amend. *Id.* (citing Op. & Order at 8).

Taking the last issue first, leave to amend will be granted for the limited purpose of adding allegations regarding the opt-in plaintiff and the successor firm. Judge Oetken denied plaintiffs' request to plead "additional allegations of retaliation." Op. & Order at 8. That denial forecloses plaintiffs' current request, somewhat more broadly phrased, to add allegations concerning "material developments" since the operative complaint was filed. However, the District Judge did not forbid the limited amendments that are necessary simply to conform the pleadings to the current cast of characters. Certainly those amendments should be accomplished, for the benefit of all parties, well before any substantive motion practice is renewed. Due to the limited nature of the amendments permitted plaintiffs should not require more than a few weeks to complete the task.

With regard to the discovery schedule, neither side's proposal is entirely reasonable. Plaintiffs' schedule likely underestimates the time required for a large law firm (which happens



to be in the midst of a merger) to retrieve and produce documents relevant to the six *Clackamas* factors, many of which implicate fairly broad issues of firm management. In addition to disputes concerning the proper boundaries of the limited discovery authorized by the District Judge, I anticipate confidentiality and privilege issues that will require careful analysis and good-faith negotiations, and may also require judicial intervention. Defendants' schedule, on the other hand, would improperly delay their responses to plaintiffs' long-pending requests until defendants have served, and received responses to, new requests of their own. Having considered the parties' positions, and finding good cause, it is hereby ORDERED that:

1. Defendants shall serve revised responses to plaintiffs' First Set of Requests for Production of Documents (RFP) no later than **July 19, 2017**. Since defendants have previously served objections, they may not raise new objections now. The purpose of the revised responses is to withdraw those objections foreclosed by Judge Oetken's Opinion and Order and to specify, in accordance with Fed. R. Civ. P. 34(b)(2), whether and to what extent responsive documents will be produced or withheld on the basis of any remaining objections.
2. The parties shall promptly meet and confer in good faith to develop (a) an electronically stored information (ESI) protocol and search terms, and (b) a stipulated confidentiality order, both to be completed no later than **August 2, 2017**.
3. Defendants shall produce non-ESI documents in response to plaintiffs' RFP, together with a privilege log, no later than **September 1, 2017**.
4. Defendants shall produce ESI in response to plaintiffs' RFP on a rolling basis, to be completed no later than **November 1, 2017**. Defendants' privilege log with regard to the ESI must be served no later than the end date for ESI production.
5. Defendants shall serve any written discovery requests concerning the *Clackamas* factors as promptly as possible and in no event later than **July 14, 2017**. Plaintiffs shall serve their responses, in accordance with Fed. R. Civ. P. 34(b), within 30 days after being served, shall produce responsive non-ESI documents, together with a privilege log, within 60 days after being served, and shall produce ESI in response to defendants' requests on a rolling basis, to be completed no later than **November 1, 2017**. Plaintiffs' privilege log with regard to the ESI must be served no later than the end date for ESI production.
6. Depositions, limited to matters relevant to the *Clackamas* factors, shall be completed no later than **January 15, 2018**.

7. Any renewed motion for summary judgment or related relief shall be filed no later than **February 15, 2018**. The parties may submit an agreed-upon briefing schedule at that time.
8. The parties are reminded that discovery disputes must be raised promptly in compliance with Local Civil Rule 37.2 and Part II.B of Judge Moses's Individual Practices. It is the Court's practice to decide discovery disputes at the Rule 37.2 conference, based on the parties' letters, unless a party shows good cause why more formal briefing should be required. Absent extraordinary circumstances, discovery applications made later than 30 days prior to the close of discovery may be denied as untimely.
9. The Court will hold a discovery status conference on **October 20, 2017, at 10:00 am**. At least one week prior to the conference (no later than **October 13, 2017**), the parties shall submit a joint status letter outlining the progress of discovery to date. The letter shall list and succinctly describe, without argument, any scheduling or discovery disputes, not previously submitted to the Court, as to which the parties seek judicial intervention. If no controversies exist at that time, the parties may request, in their status letter, that the conference be held by telephone.
10. Plaintiffs may file a Second Amended Complaint on or before **August 2, 2017**, for the limited purpose of adding allegations regarding the opt-in plaintiff and the successor firm.

Dated: New York, New York  
July 5, 2016

**SO ORDERED.**

  

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**BARBARA MOSES**  
United States Magistrate Judge